



**Legal Opinion L-2005-24**  
**November 10, 2005**

U.S. Railroad Retirement Board  
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Mr. William W. Wilkins  
Tax Commissioner  
Ohio Taxation Department  
30 East Broad Street, 22 Floor  
Columbus, Ohio 43215

RE: United States Railroad Retirement Board

Dear Mr. Wilkins:

This is in response to the Commercial Activity Registration Notice and Registration Form CAT 1, postmarked October 7, 2005, which was addressed to the United States Railroad Retirement Board headquarters in Chicago. The Notice states that the Ohio General Assembly has enacted a Commercial Activity Tax (Ohio Revised Code Ann. Chapter 5751)(2005), which is imposed on the privilege of doing business in Ohio, and provides the Board with directions for registration by November 15, 2005. The Notice has been referred to me for reply.

The United States Railroad Retirement Board is an independent agency in the executive branch of the United States Government which administers the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Railroad Retirement Act replaces the Social Security Act for employees in the railroad industry. Railroad retirement benefits are paid from the Railroad Retirement Account, which is maintained by the Department of the Treasury of the United States and is financed through taxes levied upon railroad employees and employers by the Railroad Retirement Tax Act (26 U.S.C. § 3201 et seq.), which is administered by the Internal Revenue Service. The Railroad Unemployment Insurance Act replaces the various State unemployment insurance systems for railroad employees. The Board serves the railroad industry through a headquarters office in Chicago, and through field offices in various cities throughout the country, including Cleveland and Cincinnati.

A State may not levy a tax directly upon the United States. Article 6, clause 2 of the United States Constitution; McCulloch v. Maryland, 17 U.S. (4 Wheat) 316 (1819). As an agency of the United States Government, the United States Railroad Retirement Board is therefore not subject to the Ohio Commercial Activity Tax (O.R.C. Ann. Chapter 5751). Moreover, I note that section 5751.01(A) of that Chapter defines "person" subject to the tax to include individuals, companies, trusts and estates, but to exclude non-profit organizations. It therefore appears that the Board is does not meet the definition of person subject to the Tax under Chapter 5751.

The United States Railroad Retirement Board will therefore not register with the Commercial Activity Tax Division of the Department of Taxation.

Sincerely,

Steven A. Bartholow  
General Counsel